



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of William Marroquin,
Paterson

Administrative Appeal

CSC Docket No. 2020-2198

ISSUED: SEPTEMBER 18, 2020 (HS)

William Marroquin, a former Police Officer with Paterson, appeals his resignation in good standing, effective February 19, 2019.

As background, the appellant’s name appeared on the Police Officer (S9999U) eligible list, which promulgated on March 29, 2017 and expired on May 1, 2020.¹ The appellant’s name was certified to Paterson on October 22, 2018. The appellant received a regular appointment, effective January 14, 2019, and resigned in good standing, effective February 19, 2019.

In his appeal to the Civil Service Commission (Commission), postmarked February 18, 2020, the appellant recounts that on February 19, 2019, he was dismissed from academy training and “forced” to resign by Paterson. The appellant states that he was told that he had to resign or else Paterson would initiate the removal process. The appellant indicates that he filed an appeal to the Police Training Commission (PTC) as instructed concerning his dismissal from academy training but claims that he was never notified to file an appeal to the Commission concerning his alleged “forced” resignation. On June 18, 2019, the PTC decided the appellant’s appeal in his favor and reversed his dismissal from the academy. In support, the appellant submits, among other documents, copies of his notice of dismissal from academy training; a notice informing him of the appeal process with respect to his dismissal from the academy; and the PTC’s final decision in the appellant’s appeal reversing his dismissal from the academy. It is noted that the

¹ The eligible list was extended to May 1, 2020.

notice informing the appellant of the appeal process with respect to dismissal from the academy includes the following language:

If you were terminated from employment following your dismissal from a basic course, an appeal to the [PTC] will not resolve your employment status. In other words, the [PTC] cannot order your return to work. Should you wish to appeal your termination from employment, you should file the appropriate appeal with either the Merit System Board² or the Superior Court. If the [PTC] grants your appeal, you must contact your employer to determine whether and under what circumstances you may return to work.

In response, Paterson takes exception to the appellant's contention that he was in any way "forced" to resign. Paterson acknowledges that it presented the appellant with a choice: voluntarily resign in good standing and try again in the future or be removed. Paterson argues that although the choice may have made the appellant uncomfortable, it was neither coercive nor inappropriate to present the option to resign since there was a factual and legitimate basis at the time to move forward with removal, *i.e.*, the appellant's dismissal from the academy. Paterson states that as a matter of policy, it does not "recycle" recruits who fail any portion of academy training, and it maintains that it is not obligated to do so. Nevertheless, Paterson indicates that in light of the appellant's successful appeal to the PTC, it has no objection to the restoration of his name to the eligible list. However, Paterson states that any consideration for the appellant's reemployment must be predicated upon an updated preemployment process, and his continued employment would once again be conditioned upon successful completion of academy training.

CONCLUSION

N.J.A.C. 4A:2-6.1(d) allows an employee to appeal a resignation in good standing if the resignation was the result of duress or coercion. In this regard, an appellant has the burden of proving by a preponderance of the evidence that the resignation was the result of duress or coercion on the appointing authority's part. The appeal must be filed within 20 days. *See N.J.A.C.* 4A:2-6.1 and *N.J.A.C.* 4A:2-1.1(b).

In this case, the appellant resigned on February 19, 2019 but did not file the instant appeal until almost one year later. The appellant claims that while he was instructed to file an appeal to the PTC, he was not notified to file an appeal to the Commission. This is unpersuasive. The notice informing the appellant of the appeal process with respect to dismissal from the academy clearly states that an appeal to the PTC would not resolve one's employment status and that the PTC could not order one's return to work. The notice further states that to appeal a "termination from

² The Merit System Board is the predecessor to the Commission. *See N.J.S.A.* 11A:11-1.

employment,” one had to file the appropriate appeal with, in relevant part, the Merit System Board (MSB), which is the Commission’s predecessor.³ The appellant also offers no substantive explanation for his eight-month delay in filing this appeal following his receipt of the PTC’s decision. As such, the appeal has not been timely presented, and the question becomes whether there is any basis in this case to extend or to relax the time for appeal. *See N.J.A.C. 4A:1-1.2(c)* (the Commission has the discretionary authority to relax rules for good cause). For reasons that will be discussed later in this decision, the Commission finds that there is good cause in this case to relax the time for appeal and provide the appellant with a partial remedy. For completeness, however, the Commission will first address the appellant’s claim that he resigned under duress.

In New Jersey, the law concerning the concept of duress has been extensively examined. As stated by Administrative Law Judge Robert S. Miller and affirmed by the MSB in *In the Matter of Dean Fuller* (MSB, decided May 27, 1997):

Duress is a force, threat of force, moral compulsion, or psychological pressure that causes the subject of such pressure to become overborne and deprived of the exercise of free will. *Rubenstein v. Rubenstein*, 20 *N.J.* 359, 366 (1956) . . . This test is subjective, and looks to the condition of the mind of the person subjected to coercive measures, not to whether the duress is of “such severity as to overcome the will of a person of ordinary firmness.” [*Shanley & Fisher, P.C. v. Sisselman*, 215 *N.J. Super.* 200, 212 (App. Div. 1987)] (citation omitted). Therefore, “the exigencies of the situation in which the alleged victim finds himself must be taken into account.” *Id.* at 213, *quoting Ross Systems v. Linden Dari-Delite, Inc.*, 35 *N.J.* 329, 336 (1961).

However, a party will not be relieved of contractual obligations “in all instances where the pressure used has had its designed effect, in all cases where he has been deprived of the exercise of his free will and constrained by the other to act contrary to his inclination and best interests.” *Wolf v. Marlton Corp.*, 57 *N.J. Super.* 278, 286 (App. Div. 1959). Rather, “the pressure must be wrongful, and not all pressure is wrongful.” *Rubenstein, supra* at 367. Further, “it is not enough that the person obtaining the benefit threatened intentionally to injure . . . provided his threatened action was legal . . .” *Wolf, supra* at 286, *quoting* 5 Williston, *Contracts* (rev. ed. 1937), § 1618, p. 4523.

³ While it would have been preferable had the notice been revised to refer to the “Civil Service Commission” rather than the “Merit System Board,” “[a]ny . . . document . . . which refers to the . . . Merit System Board shall mean the . . . Civil Service Commission.” *See N.J.S.A. 11A:11-3.*

It is a “familiar general rule . . . that a threat to do what one has a legal right to do does not constitute duress.” *Wolf, supra* at 287. “A ‘threat’ is a necessary element of duress, and an announced intention to exercise a legal right cannot constitute a threat.” *Garsham v. Universal Resources Holding, Inc.*, 641 *F. Supp.* 1359 (D.N.J. 1986). Thus, as long as the legal right is not exercised oppressively or as a means of extorting a settlement, the pressure generated by pursuit of that right cannot legally constitute duress. *See generally, Great Bay Hotel & Casino, Inc. v. Tose*, 1991 W.L. 639131 (D.N.J. 1991) (unrep.) and citations therein.

In this matter, the record indicates that the appellant resigned from his position due to his dismissal from academy training. Paterson informed him that he had to resign or be removed. However, the appellant does not provide any evidence that establishes that Paterson exerted any pressure on him in this regard. The appellant’s decision to resign was a personal choice, and his belief that he would have been removed from employment absent evidence of force or intimidation, does not constitute illegal duress. *See In the Matter of Sean Nally* (CSC, decided December 2, 2009); *In the Matter of Claudia Grant* (MSB, decided June 8, 2005). Further, the Commission notes that pursuant to *N.J.S.A. 52:17B-66 et seq.* (Police Training Act), police officers are required to successfully complete a police training course before performing police officer duties. As the appellant could not complete his training, the only options left to Paterson at the time he was dismissed from the academy were to remove the appellant; allow the appellant to attend a later academy class; or permit the appellant to resign in good standing so as not to negatively affect his employment record. Here, Paterson chose to allow the appellant to resign in good standing rather than remove him. As such, the appellant has failed to demonstrate that his resignation was the result of duress or coercion by Paterson and, thus, has not sustained his burden of proof on that issue.

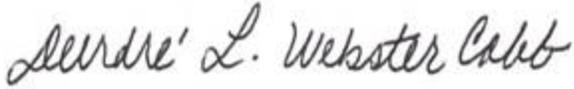
Nevertheless, the Commission cannot ignore that the appellant was ultimately successful in his appeal to the PTC, which reversed his dismissal from academy training, and Paterson has no objection to the appellant’s restoration to the eligible list. Those factors supply good cause in this case to relax the time for appeal and afford the appellant some relief. Therefore, the appellant’s name shall be restored to the Police Officer (S9999U), Paterson eligible list. Since the list expired on May 1, 2020, it is appropriate to revive that list at the time of the next certification to allow the appellant to be considered for prospective appointment. The Commission emphasizes that this remedy does *not* mean that the appellant has been reinstated to employment. Rather, at the time of certification, the appellant must undergo the preemployment process anew.

ORDER

Therefore, it is ordered that the eligible list for Police Officer (S9999U), Paterson be revived in order for William Marroquin to be considered for appointment at the time of the next certification for prospective employment opportunities only.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE DAY 16th OF SEPTEMBER, 2020



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